

¹ 5 U.S.C. § 8101 *et seq.*

2015 she was exposed to a pest repellent being sprayed in an adjacent field, field five, and while she was weeding in field six with five coworkers. She did not stop work.

In letters dated June 8, 2015, OWCP informed appellant of the evidence needed to support her claim and asked the employing establishment to describe her work duties and exposure.

The five coworkers who were weeding in field six on May 26, 2015 provided statements. Each indicated that they were told spraying would be done in the adjacent field and if they smelled anything to leave. Each maintained that they did not smell anything and that the wind was blowing away from them. Jason Coffman, a coworker, advised that on May 26, 2015 he sprayed field five with Spotrete,² beginning at approximately 9:45 a.m.

Richard Gilbert, nursery manager and appellant's supervisor, provided a statement on June 16, 2015. He advised that appellant was weeding in field six with five other nursery employees at the time of the claimed exposure, which occurred for approximately 30 minutes and only once. Mr. Gilbert maintained that all standard operating procedures were followed, and noted that appellant did not report to the coworkers that she smelled anything and did not leave the field. He did note that it was possible that she was exposed to the fungicide.

In a June 17, 2015 statement, appellant related that on May 26, 2015 as soon as she smelled the spraying from the adjacent field, she instantly got a headache and started to feel dizzy, and that, after lunch her eyes were itchy, that she felt nauseated, and the headache continued. She indicated that she worked the entire day, and awoke with a headache the next day, with sneezing, a scratchy throat, eye irritation, and occasional dizziness. When appellant went to work, she reported her symptoms to her supervisor. She began working in the office that day and did no outside work. Appellant related that on May 28, 2015 she felt fine until she reported to work, when a headache began, that she was nauseated after lunch, and had continued dizziness. She reported that on May 29, 2015 she again awakened with a headache, sneezing, and a scratchy throat, and that she and her supervisor went to see the doctor that day. Appellant maintained that all her symptoms were caused by exposure to Spotrete for approximately 30 minutes on May 26, 2015 and that she continued to have headaches, sneezing, and a scratchy throat. She attached a diary of events and symptoms dated May 26 to June 1, 2015, when she stated that she was much better with no symptoms.

In a May 29, 2015 report, Dr. Shawn S. Lawrence, a Board-certified family physician, noted appellant's report that she was exposed to a fungicide at work on May 26, 2015 when an adjoining field was sprayed. She described appellant's symptoms of immediate headache, dizziness, and slight nausea after eating. Dr. Lawrence noted a history of migraine headaches and significant allergies. Following physical examination, she diagnosed allergic rhinitis, chemical exposure, and migraine headache. Dr. Lawrence reported that appellant looked "ok" that day and opined that her symptoms were from untreated allergies and migraine headache. She prescribed symptomatic treatment. On June 22, 2015 Katrina White, a physician assistant and associate of Dr. Lawrence, advised that appellant could return to work on May 29, 2015.

² Spotrete is a turf fungicide animal repellent.

By decision dated July 17, 2015, OWCP found that the claimed exposure was established, but denied the claim because the medical evidence was insufficient to establish that a medical condition was causally related to the work event.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.³

OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.⁴ To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁵

OWCP regulations define the term “occupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.”⁶ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

³ Gary J. Watling, 52 ECAB 278 (2001).

⁴ 20 C.F.R. § 10.5(ee); Ellen L. Noble, 55 ECAB 530 (2004).

⁵ *Supra* note 3.

⁶ 20 C.F.R. § 10.5(ee).

⁷ Roy L. Humphrey, 57 ECAB 238 (2005).

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

ANALYSIS

The Board initially notes that, although appellant filed an occupational disease claim, this case is for a traumatic injury. As noted above, OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.¹¹ The exposure in the instant case occurred during a 30-minute period on one day, May 26, 2015. It is thus clearly a traumatic injury claim and the claim will be evaluated as such.

OWCP accepted that appellant was exposed to a fungicide on May 26, 2015 while in the performance of duty. It denied her claim, however, because it found that she had not met her burden of proof to establish a causal relationship between the employment exposure and a medical condition. The Board finds that the medical evidence of record is insufficient to establish that appellant sustained an injury causally related to the May 26, 2015 employment exposure.

The only medical report of record from a physician is the May 29, 2015 report in which Dr. Lawrence described the work exposure, appellant's symptoms, and physical examination findings. Dr. Lawrence advised that appellant "seemed okay" that day and opined that her symptoms were from untreated allergies and migraine headache. Her associate, Ms. White, advised that appellant could return to work that day.¹²

Dr. Lawrence's report does not support that the employment exposure on May 26, 2015 caused an injury. Thus, the medical evidence does not establish that appellant's condition was causally related to the employment exposure.

⁸ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹¹ *Supra* note 4.

¹² A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in section 8102(2) of FECA. 5 U.S.C. § 8102(2); *see R.M.*, 59 ECAB 690 (2008). Reports from a physician assistant are not considered medical evidence as a physician assistant is not considered a physician under FECA. *Ricky S. Storms*, 52 ECAB 349 (2001).

To support a claim for compensation, the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.¹³ No physician did so in this case. Appellant, therefore, did not meet her burden of proof to establish an injury in the performance of duty on May 26, 2015.¹⁴

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an injury in the performance of duty on May 26, 2015.

ORDER

IT IS HEREBY ORDERED THAT the July 17, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 7, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹³ *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

¹⁴ *W.L.*, Docket No. 13-1727 (issued February 4, 2014).